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Commission

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA VALLEY MIWOK TRIBE,

Plaintiff,

v.

**THE CALIFORNIA GAMBLING CONTROL
COMMISSION; and DOES 1 THROUGH 50,
Inclusive,**

Defendants.

08-CV-0120 BEN AJB

**DEFENDANT CALIFORNIA
GAMBLING CONTROL
COMMISSION'S REPLY TO
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
CHANGE OF VENUE TO THE
EASTERN DISTRICT OF
CALIFORNIA SACRAMENTO
DIVISION**

Hearing: March 10, 2008
Time: 10:30 a.m.
Courtroom: 3
Judge: The Honorable
Roger J. Benitez

Defendant California Gambling Control Commission's ("Commission") motion to change the venue of this action to the Eastern District of California, Sacramento Division, is based on the fact that the parties to this suit are all located in the Eastern District and that a suit for breach of the tribal-state class III gaming compacts ("Compacts") at issue in this case is to be brought in

1 the jurisdiction in which the affected tribe is located.

2 In her opposition to the Commission's motion, Silvia Burley^{1/} relies primarily upon the
3 premise of her motion for remand filed concurrently with the Commission's motion for change
4 of venue and motion to dismiss. It is, of course, self-evident that if this Court chooses to remand
5 this case to the California courts, California venue statutes will control and the Commission's
6 motion for change of venue will be moot.

7 If the Court denies Ms. Burley's motion for remand, however, the Commission's motion for
8 change of venue must be considered. Ms. Burley's only opposition to the Commission's motion
9 for change of venue itself is her contention that the Compacts do not prefer that an action by a
10 third party beneficiary to the Compacts be brought in the jurisdiction where the third party
11 beneficiary is located and that, under state law, an action brought in state court against the
12 Commission could be brought in San Diego County Superior Court.

13 Ms. Burley, however, completely ignores the other bases for the Commission's motion
14 which is that the parties to this action all reside in the Eastern District and that the distribution of
15 Revenue Sharing Trust Fund monies requested by the Complaint would take place in the Eastern
16 District. Though she asserts that there is no declaration establishing that the parties to this
17 proceeding all reside in the Eastern District, none is required because the Complaint and service
18 documents in this action all establish the location of the parties.

19 Further, the fact that if this action were tried in state court, state law venue might be proper
20 in San Diego County Superior Court does not control venue in federal court. Under established
21 law, state law cannot control venue in federal courts. *See Steel Motor Service, Inc. v. Zalke*, 212
22 F.2d 856 (6th Cir.1954); 1 Moore's Fed. Prac. ¶¶.140[1.-3-1]; 32 Am.Jur. at 796.

23 Finally the fact that the Compacts do not address the question of where a third party
24 beneficiary is required to bring an action for breach of the Compacts does not establish that
25

26 1. The Commission describes the plaintiff in this case as Silvia Burley instead of the
27 California Valley Miwok for the same reasons the Court of Appeal did so in *California Valley*
28 *Miwok v. U.S.*, No. 06-5203, 2008 WL 398455 (D.C. Cir. Feb. 15, 2008). The court did so because
it found that Ms. Burley was acting on behalf of only a small cluster of tribal members and did not
represent the interests or have the consent of the vast majority of putative tribal members.

1 venue is proper anywhere that entity might choose to file suit. First, the Compacts' failure to
2 address venue for a third party beneficiary suit is readily explained by the fact that no such suit is
3 authorized by the Compacts. (*See* Compact § 15.1, Compl., Ex. A, at 44.) Second, a third party
4 beneficiary is bound by the terms of the contract upon which it seeks relief. *Trans-Bay*
5 *Engineers & Builders, Inc. v. Hills*, 551 F.2d 370 (D.C. Cir. 1976). As more fully set forth in the
6 Commission's moving papers, suits for breach of the Compacts are to be brought in the
7 jurisdiction in which the affected tribe is located.

8 For these reasons and those set forth in the Commission's moving papers, the Court is
9 respectfully requested to grant the Motion for Change of Venue to the Eastern District of
10 California, Sacramento Division.

11 Dated: March 3, 2008

12 Respectfully submitted,

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19
20 /s/Peter H. Kaufman
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22 Attorneys for Defendant the California Gambling Control
Commission
23

24 Reply to Plaintiff's Opp.for.Change.of.Venue.wpd
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CERTIFICATE OF SERVICE

Case Name: **California Valley Miwok Tribe v. California Gambling Control Commission**

Court: **United States District Court, Southern District, Case No. 08-CV-0120 BEN
AJB**

I declare:

On **March 3, 2008**, I electronically filed the following document(s):

**DEFENDANT CALIFORNIA GAMBLING CONTROL
COMMISSION'S REPLY TO PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR CHANGE OF VENUE TO THE
EASTERN DISTRICT OF CALIFORNIA SACRAMENTO
DIVISION**

Electronic Mail Notice List

I have caused the above-mentioned document(s) to be electronically served on the following person(s), who are currently on the list to receive e-mail notices for this case:

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Manual Notice List

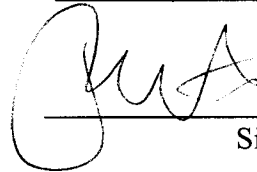
The following are those who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing):

NONE

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **March 3, 2008**, at San Diego, California.

Roberta L. Matson

Declarant



Signature

SA2008300115

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